

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
Assessment and Collection of	)	MD Docket No. 04-73
Regulatory Fees for Fiscal Year 2004	)	
	)	

To: The Commission

**REPLY COMMENTS**

ORBCOMM LLC, and its wholly-owned subsidiary ORBCOMM License Corp. (collectively “ORBCOMM”), by their undersigned counsel, respectfully submit these reply comments in the above-captioned proceeding. ORBCOMM is the owner and operator of the ORBCOMM non-voice non-geostationary mobile satellite service (“NVNG MSS”) system.<sup>1</sup> By these Reply Comments, ORBCOMM endorses the principal arguments presented in the April 21, 2004, Comments filed in the instant proceeding by New Operating Globalstar LLC (“Globalstar”). Specifically, ORBCOMM hereby joins Globalstar in urging the Commission to reduce the proposed fee payment obligation for non-geostationary orbit (“NGSO”) satellite system licensees.<sup>2</sup>

Given the facts at hand, a reduction of the proposed Fiscal Year 2004 (“FY2004”) schedule of Regulatory Fee payments for NGSO space station licensees is clearly justified under the applicable provisions of the Communications Act of 1934 (as amended), 47 U.S.C. § 151, *et seq.* (the “Act”). Moreover, a reduction is necessary to more accurately reflect the equitable burden of the overall FY2004 Regulatory Fee revenue requirement that should be borne by

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<sup>1</sup> 47 C.F.R. §§ 25.135 & 25.142. The FCC authorizations relating to the ORBCOMM NVNG MSS system are issued under FCC Call Signs S2103, E940534, E940535, E945036, E945037 & E945038.

<sup>2</sup> See *Notice of Proposed Rulemaking*, MD Docket No. 04-73, 19 FCC Rcd. 5795 (2004) (the “NPRM”), at Attachment ‘C’.

ORBCOMM and other NGSO space station licensees. The Globalstar Comments present a cogent and thorough analysis of the legal and equitable bases for a reduction of the proposed FY2004 Regulatory Fee for NGSO space station licensees.<sup>3</sup>

ORBCOMM agrees with the inescapable conclusion reached by Globalstar that the increase of almost 50% over the Fiscal Year 2003 fee amount for NGSO space station licensees proposed in the NPRM is *contrary* to the Regulatory Fee calculation procedures specified in Section 159 of the Act. *Id.* The nearly 50% increase proposed for NGSO space station licensees is *far* in excess of the cumulative 1.5% increase in the FY2004 Regulatory Fee revenue requirement over the Fiscal 2003 level.<sup>4</sup> This increase is the result of the standard calculation described in the NPRM that, *inter alia*, applies the computed 1.5% increase to the total expected Fiscal Year 2003 revenue from NGSO space station licensee fees, and then divides that amount by the current number of licensees.<sup>5</sup>

The calculations should not have ended at this point. As Globalstar aptly points out, there are a number of other adjustment factors that should have been applied in the NPRM to comport with the Regulatory Fee calculation guidelines set forth in Section 159 of the Act.<sup>6</sup> Such a drastic increase in the proposed FY2004 Regulatory Fee for NGSO space station licensees clearly is not, “....***reasonably related to the benefits provided to the payor[s] of the fee[s]*** by the Commission’s activities...”.<sup>7</sup> The NPRM offers no corresponding rationale for this massive increase equating to any increase in Commission activities uniquely relating to the

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<sup>3</sup> Globalstar Comments, at pp. 2-5.

<sup>4</sup> See, e.g., NPRM, at ¶ 2.

<sup>5</sup> NPRM, at ¶ 2.

<sup>6</sup> Globalstar Comments, at pp. 2-5.

<sup>7</sup> See 47 U.S.C. § 159(b)(1)(a) (*emphasis added*); see, also, NPRM, at FN 2. The NPRM also fails to apply any adjustment factor to reflect the reduction of NGSO space station payers from seven in 2003 to five in 2004 in accordance with the provisions of Section 159(b)(2)(A) of the Act, 47 U.S.C. § 159(b)(2)(A).

regulation of NGSO space station licensees that are chargeable under the Regulatory Fee regime.<sup>8</sup>

Quite to the contrary, an objective review of the FCC Record and the roster of current open proceedings indicates that the level of feeable regulatory activities uniquely relating to NGSO satellite services has declined in recent years.<sup>9</sup> Moreover, given the lack of open proceedings or pending rulemaking petitions of specific relevance, there is no foreseeable change in this situation that can be reasonably projected for FY2004. This decrease in feeable regulatory activities may be due, in part, to well-known changes in the marketplace, and the reduced pool of NGSO space station licensees. It may also be attributable to the relative stability of the underlying service rule structures that specifically apply to these types of systems. Regardless of the underlying causes, these circumstances clearly do *not* justify a nearly 50% increase in the FY2004 Regulatory Fee burden for NGSO space station licensees.

Thus, in adopting the final schedule of FY2004 Regulatory Fees, the Commission must reapportion the collection burdens to reduce the fee imposed on NGSO space station licensees. The reduction should equitably reflect the overall 1.5% increase in total FY2004 Regulatory Fee revenue requirements. The three reduction methodologies proposed by Globalstar merit careful consideration.<sup>10</sup> Whatever methodology is utilized, the provisions of the Act and equitable principles dictate that the resulting adjustment must be downward. The final FY2004 Regulatory Fee for NGSO space station licensees must reflect the decreased level of feeable regulatory activities uniquely relating to NGSO space services *and* the reduction in the number of possible

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<sup>8</sup> Commission activities (referred to herein as “feeable regulatory activities”) specified in Section 159(a)(1) of the Act, 47 U.S.C. § 159(a)(1), that comprise the chargeable elements underlying FCC Regulatory Fees include rulemaking and certain other non-adjudicatory functions.

<sup>9</sup> Similarly, a review of the Commission FY2004 Budget Estimates submitted to Congress, and other Commission planning and strategy documents fails to uncover and indication of a foreseeable increase in feeable regulatory activities specifically or uniquely relating to the NGSO satellite services.

<sup>10</sup> Globalstar Comments, at pp. 7-8.

payers in this class from seven to five. Of course, any unsatisfied fee collection requirement that results from the reduction of the proposed FY2004 Regulatory Fee for NGSO space station licensees must be recouped through apportionment to other payers. Assuming that the proposed FY2004 Regulatory Fee revenue requirements allocated to the satellite services as a whole have been calculated in accordance with the Act and actual budget figures (an assumption that ORBCOMM has not been able to confirm, due its inability, after diligent efforts, to locate any appropriately detailed budget information in the Public Record), ORBCOMM suggests that the Commission reapportion the collection shortfall that will result from reduction of the NGSO space station licensee fee across all 3400 projected FY2004 earth station license payers. This would appear to be the most equitable and least painful manner to distribute the burden of feeable regulatory activities among satellite service payers. Alternatively, if the Commission's budgetary process lacks sufficient granularity to legitimately reapportion in the above-described manner, the shortfall from the reduction of the NGSO space station license fee should be reallocated across a larger group of payers that can be rationally tied to an increase in feeable regulatory activities greater than the cumulative 1.5% overall increase.

### **CONCLUSION**

For the above-stated reasons, the Commission should reduce the final FY2004 Regulatory Fee payment obligation for NGSO space station licensees in accordance with the Act and the above-described circumstances. The public interest, convenience and necessity will be well-served by such action. Among other things, a reduction in the subject fee payment

obligation will allow ORBCOMM and the other affected licensees to use the subject funds to maintain, improve and expand the valuable services they provide to the public.

Respectfully submitted,

ORBCOMM LLC & ORBCOMM LICENSE CORP.

*/s/ Walter H. Sonnenfeldt*

By: \_\_\_\_\_  
Walter H. Sonnenfeldt

*WALTER SONNENFELDT & ASSOCIATES*

83 Thackery Road  
Rochester, New York 14610-3358  
(301) 641-5007  
E-Mail: wsatelecom@compuserve.com

Their Attorney

April 30, 2004

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that true and correct copies of the “REPLY  
COMMENTS” of ORBCOMM LLC and ORBCOMM License Corp. in MD Docket No. 04-73  
were served by first-class U.S. Mail, postage prepaid, this 30th day of April, 2004 upon:

William F. Adler  
Vice President, Legal & Regulatory Affairs  
Globalstar, L.P.  
3200 Zanker Road  
San Jose, California 95134

William D. Wallace  
Crowell & Moring LLP  
1001 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
Counsel for New Operating Globalstar LLC

*/s/ Walter H. Sonnenfeldt*

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Walter H. Sonnenfeldt